

11-26-91 JPB

239

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

26 NOV 1991

IN REPLY REFER TO:
8920-JDB

Gadsden State Community College
100 George Wallace Drive
Gadsden, AL 35999-9990

Board of Trustees
Jacksonville State University
104 Self Hall
Jacksonville, AL 36265

Sable Community Broadcasting Corporation
611 Church Street
Hobson City, AL 36201

C.O. Grinstead
Trinity Christian Academy
Route 7, Box 335
Oxford, AL 36203

Board of Trustees
Shorter College
Shorter Hill
Rome, GA 30101-9989

In re: WSGN(FM), Gadsden, AL
Gadsden State Community College
BPED-860307MK
Petition For Reconsideration

WLJS(FM), Jacksonville, AL
Jacksonville State University
BPED-860321MI
Petition For Reconsideration

NEW(FM), Hobson City, AL
Sable Community Broadcasting
Corporation
BPED-851003MB

NEW(FM), Oxford, AL
Trinity Christian Academy
BPED-860512MB

NEW(FM), Rome, GA
Shorter College
BPED-860205MD

Dear Applicants:

This letter refers to the above-captioned petition filed on November 26, 1986 by Gadsden State Community College ("Gadsden") requesting reconsideration of the Commission's October 27, 1986 action returning major change application BPED-860307MK; the above-captioned petition filed on November 26, 1986 by Jacksonville State University ("Jacksonville") requesting reconsideration of the Commission's October 27, 1986 action returning application BPED-860321MI; and the above captioned applications for new non-commercial FM Stations from Sable Community Broadcasting ("Sable") in Hobson City, Alabama (BPED-851003MB); Trinity Christian Academy ("Trinity") in Oxford, Alabama (BPED-860512MB); and Shorter College ("Shorter") in Rome, Georgia (BPED-860205MD).

By way of background, all of these applications are in the same mutually exclusive group (see attached Exhibit A). Sable is the lead applicant because its application has the earliest "A" cut-off date -- May 12, 1986. The Shorter application was also placed on an "A" cut-off list with a cut-off date of October 23, 1986. Trinity's application, being mutually exclusive to Sable's application, was placed on a "B" list specifying a cut-off date of March 28, 1988. Gadsden's application was filed mutually exclusive and timely with Sable's application. In addition, Jacksonville's application was filed mutually exclusive with Gadsden's application and timely with respect to Sable's cut-off date. The Jacksonville and Gadsden proposals are "major change" applications requiring processing pursuant to 47 C.F.R. 73.3573(a) (1). Neither application has been cut-off as of this date.

GADSDEN:

Gadsden is the licensee of Station WSGN(FM), Gadsden, Alabama, which operates on Channel 218A with 3.5 kilowatts ERP and 23 meters HAAT. On March 7, 1986 Gadsden applied to upgrade WSGN to Channel 217C2 at a new transmitter site. The proposed facility would receive prohibited overlap in violation of 47 C.F.R. § 73.509 from the licensed facilities of Jacksonville on third-adjacent Channel 220A (see attached Exhibit B). However, Gadsden recognized only the

overlap with Jacksonville's proposed facilities (BPED-860321MI) and requested a waiver of 47 C.F.R. § 73.509. The overlap with the licensed facilities of Jacksonville was not addressed. The Commission, by letter dated October 27, 1986, returned Gadsden's application because of the violation of 47 C.F.R. § 73.509(a) with respect to the licensed facilities of Jacksonville but did not rule on the waiver request with respect to Jacksonville's proposed facilities. Gadsden's November 26, 1986 petition for reconsideration supplements its original waiver request to include a request for waiver of the prohibited third-adjacent overlap it would receive from the licensed facilities of Jacksonville.

Under the Public Notice entitled "Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications," 56 RR 2d 776, 49 Fed. Reg. 47331, released August 2, 1984, the Commission indicated that it would reinstate applications nunc pro tunc where the original application was dismissed and where a petition for reconsideration is filed within 30 days of the date of the dismissal which includes a relatively minor curative amendment. The minor amendment filed November 26, 1986 in conjunction with Gadsden's petition for reconsideration seeks to rectify the deficiency which resulted in the return of the original application by requesting waiver.

The Commission recently modified its policy in regard to overlap received from the second and third adjacent channel stations.

The Commission has long recognized the unique characteristics of the noncommercial service and the need for flexibility to respond to the growing demand for such service. We are also more sensitive today to the increasing limitations within the reserved band which reflect the increased demand for service over the last 30 years. For these reasons, we are now inclined to grant waivers of second or third adjacent channel overlap in circumstances such as WCPE's, where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas. However, because of the concern for the ability of the stations causing interference to make any future changes in their own facilities, as discussed below, we believe that the waiver of interference received must be granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a per se modification of the waiver recipient's license.

See Educational Information Corporation (WCPE-FM), 6 FCC Rcd 2207 (1991). The overlap between Gadsden's proposal and the licensed facilities of Jacksonville is directly analogous to that in the WCPE case. In light of the Commissions' changed policy, waiver of this overlap is warranted and will be granted with an appropriate condition.¹ Accordingly, Gadsden's application will be reinstated. Further review shows that the application as amended is acceptable for filing.

¹ Waiver of 47 C.F.R. § 73.509 with respect to Jacksonville's application is not necessary for the acceptance of Gadsden's application because they are both timely filed with respect Sable's cut-off date.

JACKSONVILLE:

Jacksonville is the licensee of Station WLJS(FM), Jacksonville, Alabama, which is licensed to operate on Channel 220A with 3.0 kilowatts ERP and 44 meters HAAT. On March 21, 1986 Jacksonville applied to move to a new transmitter site. The proposed facility would receive prohibited overlap in violation of 47 C.F.R. § 73.509 from the licensed facilities of Gadsden on second adjacent Channel 218 (see attached Exhibit C). Jacksonville recognized the conflict with Gadsden's licensed facilities and requested a waiver of 47 C.F.R. § 73.509. The Commission, by letter dated October 27, 1986, returned Jacksonville's application because of the violation of 47 C.F.R. § 73.509(a) with respect to the licensed facilities of Gadsden.² Jacksonville's November 26, 1986 petition for reconsideration was filed within 30 days of the dismissal and contains a minor curative amendment in the form of a supplement to the waiver request in the original application. Accordingly, under the Public Notice, supra, it is eligible for reinstatement nunc pro tunc. The overlap between Jacksonville's proposed 60 dBu protected contour and the licensed 80 dBu interfering contour of second adjacent channel Station WSGN is directly analogous to that in the WCPE case, supra. Therefore, waiver of this overlap is warranted and will be granted with an appropriate condition and the application will be reinstated.³ Furthermore, our review shows that the application as amended is acceptable for filing.

HEARING:

Because all of the above-referenced applications are in the same mutually exclusive group, grant of any of these applications would come only after a comparative hearing. The policy of the Commission is to avoid sending educational applications to hearing, if at all possible, so that the substantial delays and expenses involved in the hearing can be avoided. This policy finds its underpinnings in the inability of many educational applicants to bear the costs (such as legal fees) that they would incur in prosecuting mutually exclusive applications through the hearing process. Accordingly, we are taking this opportunity to make you aware of your application's mutual exclusivity. We will withhold further action with respect to the subject applications for a period of sixty (60) days so that you have an opportunity to evaluate the situation and hopefully take such steps as would remove the mutual exclusivity. Possible alternatives include frequency changes to increase the spectral separation of the proposed facilities. Share-time agreements between

² The return letter mistakenly identifies the overlap as occurring within WSGN's 60 dBu contour. It actually occurs within Jacksonville's proposed 60 dBu contour.

³ Jacksonville's proposal would also cause prohibited overlap to Gadsden's proposed facilities on third adjacent Channel 217. Waiver of 47 C.F.R. § 73.509 with respect to Gadsden's application is not necessary for the acceptance of Jacksonville's application because they are both timely filed with respect to Sable's cut-off date.

mutually exclusive educational applicants have also been employed to avoid designating their applications for hearing.

In sum, we urge you to communicate with each other concerning the mutual exclusivity issue and, if possible, to amend your applications so as to remove the present conflict between them. Action on these applications will be deferred for 60 days, to allow you the opportunity to negotiate. If no response is received during this period, these applications will be designated for a comparative hearing.

GADSDEN & JACKSONVILLE / WBRC (TV) :

When the Gadsden and Jacksonville applications were originally filed, WBRC (TV), Birmingham, Alabama was operating pursuant to BLCT-1880 with 100 kW and 338 meters HAAT. Subsequently the Commission has granted construction permit BLCT-870713KH for WBRC (TV) to increase its HAAT to 420 meters, and a license BLCT-880229KI to cover the construction permit was granted on May 31, 1988. Section 73.525(a) (2) states that: "[w]here a NCE-FM application has been accepted for filing or granted, the subsequent acceptance of an application filed by a relevant TV Channel 6 station will not require revision of the pending NCE-FM application..." Because the Gadsden and Jacksonville applications have not been accepted for filing, it is necessary pursuant to 47 C.F.R. § 73.525(a) (2), that they submit an updated Channel 6 television interference study. The interference showing must include: tabulations of the protected TV Channel 6 field strength contours and the corresponding FM interfering field strength contours (see the Public Notice dated July 15, 1985, Mimeo 5795); diagrams of the interference area plotted on a Census County Subdivision Map (MCD, CCD, or equivalent); details of any population adjustments claimed; and tabulations of the number of persons contained within the predicted interference area, as adjusted. The showings must address all applicable requirements of 47 C.F.R. § 73.525.

SHORTER:

Shorter's application BPED-860205MD contains two complete sets of engineering data, including two maps and two Section V-B's of FCC Form 340. One set proposes the coordinates 34° 15' 25" N.L. and 85° 11' 50" W.L., while the other proposes the coordinates 34° 15' 25" N.L. and 85° 11' 45" W.L. Therefore, Shorter must amend its application to clarify which coordinates are correct.

TRINITY:

With respect to Trinity's application BPED-860512MB, pursuant to the Second Report and Order in MM Docket 88-375, 54 F.R. 35335, Class A stations are allowed facilities equivalent to 6 kW at 100 meters. Accordingly, Trinity's proposal has been reclassified as a Class A facility. In addition, the Channel 6 television study submitted is incorrect. Under 47 C.F.R. § 73.525(e) (1) (iii), when using vertical polarization only, the 6 dB adjustment for antenna directivity cannot be utilized. Therefore, the Channel 6 television study must be amended to correct this deficiency. Finally, there is a discrepancy between the proposed tower height above mean sea level (AMSL) and the tower height (AMSL) on file with the Commission. The application indicated

that the tower height (AMSL) is 910 meters, while our files show it to be 909 meters. If the tower has been built to 910 meters, a copy of the FAA determination that authorizes a 910 meter tower must be submitted. However, if the tower is 909 meters above ground level, then all pertinent sections of the application may simply be corrected and submitted as an amendment in triplicate to the Secretary of the Commission and signed in the same manner as the original application.

ALL APPLICANTS:

With respect to all of the applications, an engineering study based upon OST Bulletin No. 65, October, 1985 entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation" reveals that the issue of potential occupational hazards caused by the proposed facilities was not addressed. Accordingly, all applicants must explain what steps will be taken to limit the RF radiation exposure to persons authorized access to their towers.

ORDERING CLAUSES:

For the reasons stated above, the waiver request of 47 C.F.R. § 73.509 with respect to Jacksonville's license filed by Gadsden State Community College and its petition for reconsideration ARE HEREBY GRANTED. Application BPED-860307MK for Gadsden IS HEREBY REINSTATED NUNC PRO TUNC and IS HEREBY ACCEPTED FOR FILING. The application will be placed on the next available "B" cutoff list. If Application BPED-860307MK for Gadsden is subsequently granted, the following condition will be attached: "Further modification to the facilities of Station WLJS (FM) on Channel 220A in Jacksonville, Alabama will not be construed as a per se modification of WSGN's license." (see "Educational Information Corporation" 6 FCC Rcd. 2207 (1991)).

For the reasons stated above, the waiver request of 47 C.F.R. § 73.509 with respect to Gadsden's license filed by Jacksonville State University and its petition for reconsideration ARE HEREBY GRANTED. Application BPED-860321MI for Jacksonville IS HEREBY REINSTATED NUNC PRO TUNC and IS HEREBY ACCEPTED FOR FILING. The application will be placed on the next available "B" cutoff list. If Application BPED-860321MI for Jacksonville is subsequently granted, the following condition will be attached: "Further modification to the facilities of Station WSGN (FM) on Channel 218A in Gadsden, Alabama will not be construed as a per se modification of WLJS's license." (see "Educational Information Corporation" 6 FCC Rcd. 2207 (1991)).

Further action on the subject applications will be withheld for a period of sixty days from the date of this letter to provide you an opportunity to reply. Failure to respond within this time period will result in the dismissal of the applications pursuant to 47 C.F.R § 73.3568(b). Please note that any amendment must be submitted in triplicate to the Secretary of the Commission and signed in the same manner as the original application.

Sincerely,

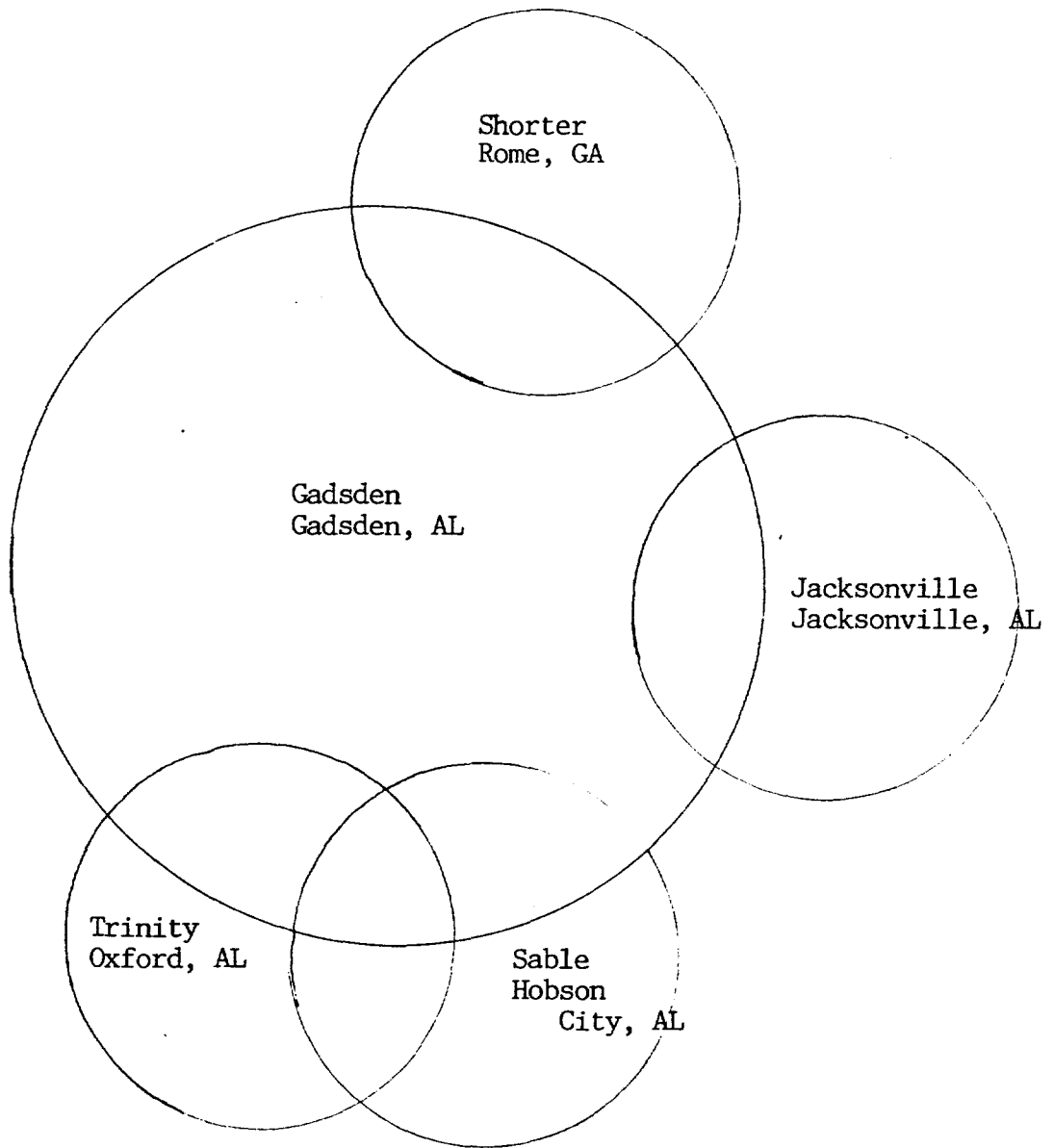


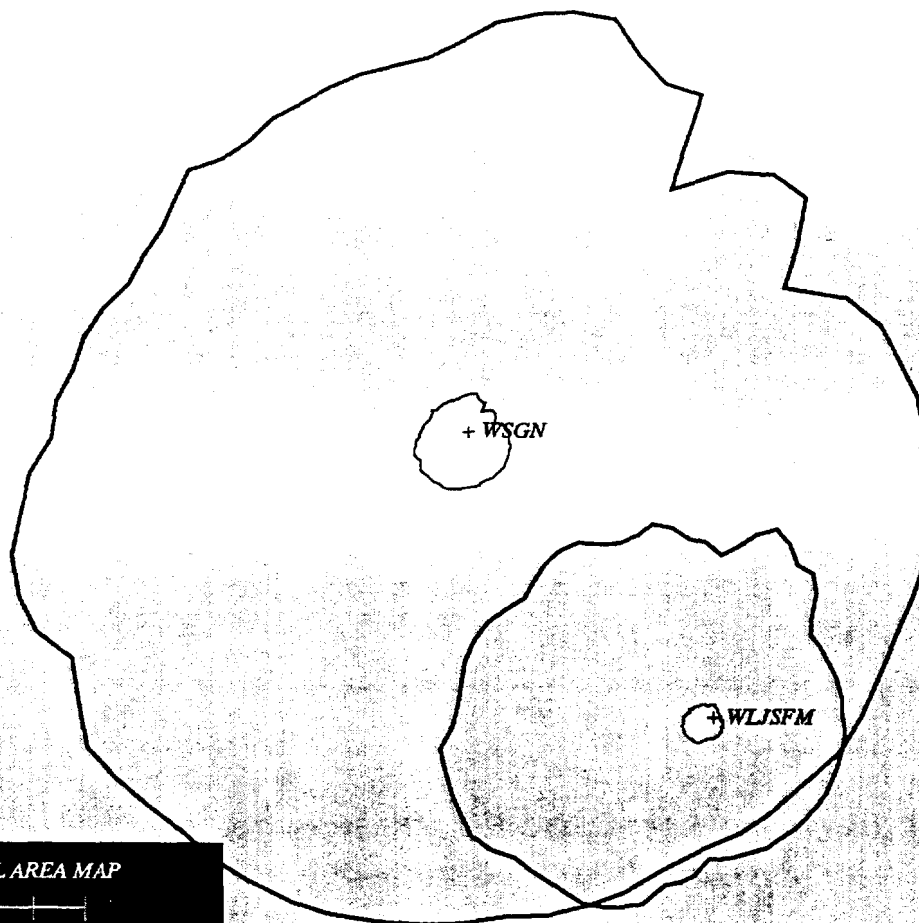
Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

cc: M. Scott Johnson (Gadsden, Jacksonville)
Richard L. Biby, P.E. (Gadsden, Jacksonville)
B. Scott Baxter (Sable)
Maudine J. Holloway (Sable)
Louis R. du Treil, P.E. (Shorter, Trinity)
Mr. Dennis Vogel (Shorter)
Reddy, Begley & Martin (Trinity)

attachments

Symbolic Graph Showing Mutual Exclusivity





LAMBERT EQUAL AREA MAP

25

0

KILOMETERS

ENGINEER:

DATE:

BRADSHAW

11/26/91

THE FOLLOWING IS A LIST OF THE DATA WHICH APPEARS ON THE ABOVE MAP

B. OM LATITUDE: 33.53 TOP LATITUDE: 34.56 LEFT LONGITUDE: -86.69 RIGHT LONGITUDE: -85.33

MAP: ENLARGED CONUS MAP PROJECTION: Lambert Equal-area CENTER LAT: 34.05 LONG: -86.01 GRID SPACING: 0.00

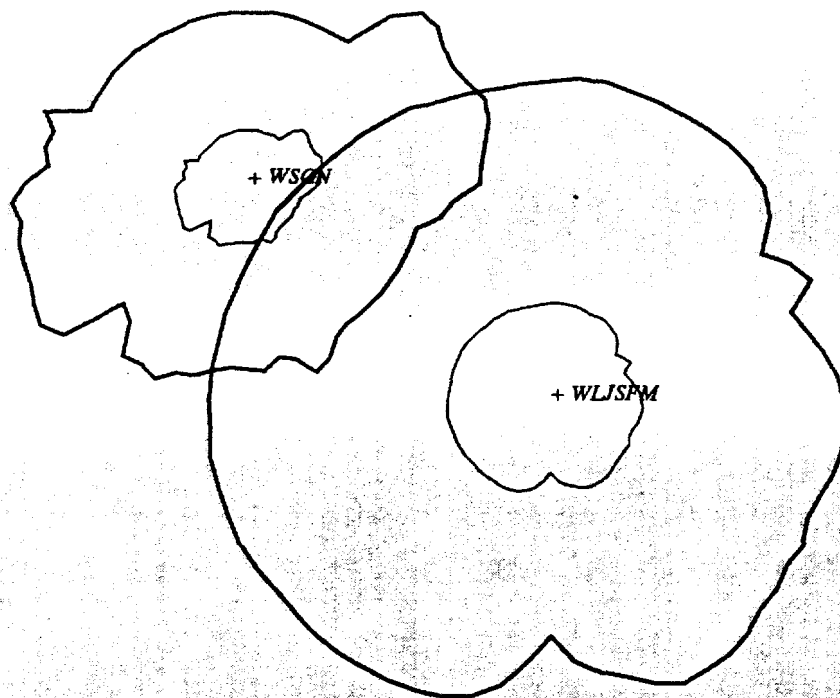
KILOMETERS / INCH = 18.72

PLOT MADE ON : 26 NOVEMBER, 1991 8:19 HOURS

call	serv	application no.	contour	chan	erp	haat	rcamsl	coverage area	A1	A7
WSGN	FM	BPED860307MK	60.0 dBu (50,50)	217	15.000	159.0	384.0	5648.5 sq km	0	0
WSGN	FM	BPED860307MK	100.0 dBu (50,10)	217	15.000	159.0	384.0	60.3 sq km	0	0
WLJS	FM	BLED810415AA	60.0 dBu (50,50)	220	3.000	44.0	287.0	1070.1 sq km	0	27
WLJS	FM	BLED810415AA	100.0 dBu (50,10)	220	3.000	44.0	287.0	26.3 sq km	29	0

A1 - Number of radials where free space equation was used for field strength calculations.

A7 - Number of radials where a HAAT less than 30 meters was adjusted to 30 meters.



LAMBERT EQUAL AREA MAP

25

0

KILOMETERS

ENGINEER:

DATE:

BRADSHAW

11 / 26 / 91

THE FOLLOWING IS A LIST OF THE DATA WHICH APPEARS ON THE ABOVE MAP

B()M LATITUDE: 33.45 TOP LATITUDE: 34.29 LEFT LONGITUDE: -86.39 RIGHT LONGITUDE: -85.28

MAP: ENLARGED CONUS MAP PROJECTION: Lambert Equal-area CENTER LAT: 33.87 LONG: -85.84 GRID SPACING: 0.00

KILOMETERS / INCH = 15.40

PLOT MADE ON : 26 NOVEMBER, 1991 7:48 HOURS

call	serv	application no.	contour	chan	erp	haat	rcamsl	coverage area	A1	A7
WLJS	FM	BPED860321MI	60.0 dBu (50,50)	220	0.320	315.0	575.0	1920.3 sq km	0	0
WLJS	FM	BPED860321MI	80.0 dBu (50,10)	220	0.320	315.0	575.0	177.3 sq km	0	0
WSGN	FM	BLED1362	60.0 dBu (50,50)	218	3.500	23.0	220.0	791.2 sq km	0	31
WSGN	FM	BLED1362	80.0 dBu (50,10)	218	3.500	23.0	220.0	77.6 sq km	0	31

A1 - Number of radials where free space equation was used for field strength calculations.

A7 - Number of radials where a HAAT less than 30 meters was adjusted to 30 meters.